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CHAPTER 22A

SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 6. COMBINED SEWER OVERFLOW ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-6.1 Applicability

This subchapter constitutes the rules of the Department governing the award of grants pursuant to the Act to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points throughout the State. These rules prescribe the procedures for the award of grants from the Combined Sewer Overflow Account.

7:22A-6.2 Combined Sewer Overflow Account

(a) The moneys in the Combined Sewer Overflow Account are available for the planning and design of dry weather overflow elimination and solid/floatables reduction at combined sewer overflow points pursuant to the provisions of this subchapter.

(b) Any local government unit authorized to control or operate a combined sewer system shall be eligible to receive grant moneys from the Combined Sewer Overflow Account. Grant moneys shall be provided to the extent available to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points based on the points awarded to the project in accordance with the Priority System ranking criteria and the submittal of the complete application within the prescribed time frames. As a component of the proposed Priority System, the Department may establish application deadlines for applicable funding cycles and a deadline by which new applications for planning and design grants for dry weather overflow elimination and solids/floatables reduction shall no longer be accepted or acted upon. Any remaining moneys in the Combined Sewer Overflow Account would be available for other authorized purposes under the Act.

(c) The consideration for a grant award from the Combined Sewer Overflow Account shall not be used as a defense by the local government unit to any action by any agency for the local government unit's failure to comply with the Act or to obtain and comply with all requisite permits, licenses and operating certificates.

7:22A-6.3 Terms of financial assistance from the Combined Sewer Overflow Account

(a) The Department may offer grants from the Combined Sewer Overflow Account for up to 90 percent of the allowable costs for the planning and/or design of combined sewer overflow abatement facilities.

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(b) Moneys will be disbursed to recipients, upon request, as work progresses and expenses are incurred and approved by the Department unless otherwise restricted by N.J.A.C. 7:22A-6.11 or unless otherwise indicated in the grant agreement. Local government units shall submit vouchers and other documentation as may be required by the Department in support of their request for disbursement of funds.

(c) The specific terms and conditions of the financial assistance shall be incorporated into the grant agreement to be executed by the recipient and the State.

7:22A-6.4 Criteria for project priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming federal Fiscal Year. The Priority System shall provide the ranking methodology which evaluates wastewater treatment facilities (including combined sewer overflow abatement facilities) individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions.

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List shall be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included on the Project Priority List shall make their request for inclusion before the close of the public comment period, except as provided for in N.J.A.C. 7:22A-6.8(a). The following shall be submitted by the authorized representative of the local government unit when requesting inclusion in the Project Priority List:

1. Brief description of the project;
2. Brief description of receiving water classification, existing water quality characteristics and existing water quality deficiencies;
3. Estimated costs associated with planning and design of the project;
4. Estimated costs associated with building the project; and
5. An estimate of population served by the combined sewer.

7:22A-6.5 State and Federal funding

Local government units which receive grants from the Combined Sewer Overflow Account shall be ineligible to receive financial assistance for the same work (planning or design) within the scope of the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a Federal grant, State

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Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same work (planning or design) within the scope of the project pursuant to this subchapter.

7:22A-6.6 Project funding

(a) The Department shall consider a local government unit's failure to submit the complete application within the time period specified as a decision to not pursue a grant for the project during the applicable funding cycle.

(b) Grant applications will be prioritized by the Department based on the criteria set forth in the Priority System pursuant to N.J.A.C. 7:22A-6.4. The award of grant funds from the Combined Sewer Overflow Abatement Account will be based on the application's priority relative to other applications certified for funding by the Department pursuant to N.J.A.C. 7:22A-6.9 and on the amount of available funds.

7:22A-6.7 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for Combined Sewer Overflow Account moneys. During the conference, the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

7:22A-6.8 Application procedures

(a) For the initial funding cycle, completed applications by local government units requesting Combined Sewer Overflow Account moneys must be received by April 6, 1990 or as otherwise extended by the Department. Since the project's rank on the Project Priority List is the first step in determining eligibility for Combined Sewer Overflow Account moneys, sponsors of projects which are not on the current Project Priority List shall provide the information listed in N.J.A.C. 7:22A-6.4(b) before or concurrently with the complete application and in conformance with applicable deadlines.

(b) For all future funding cycles, sponsors of combined sewer overflow projects shall be required to have their project placed and ranked on the Project Priority List prior to the close of the comment period for the proposed Priority System, Intended Use Plan and Project Priority List. Sponsors shall be notified of applicable application deadlines through the Priority System or through mailed notice by the Department.

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(c) The Department may establish a date by which new applications for combined sewer overflow abatement measures in future funding cycles (i.e., dry weather overflow elimination and solids/floatables reduction) shall no longer be accepted or acted upon.

(d) Any local government unit, which sponsors a project in a jurisdiction in which it is not the governmental entity responsible for the wastewater conveyance and treatment facilities pursuant to the Water Quality Management Plans, to which the combined sewer system contributes shall obtain a resolution from such governmental agency consenting to the undertaking of the local government unit's project prior to or concurrently with the application for Combined Sewer Overflow Account moneys.

(e) Each application for Combined Sewer Overflow Account moneys shall be submitted to the Department in conformance with the time period specified or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(f) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant will be so notified.

(g) The following shall be submitted when applying for a Combined Sewer Overflow Account grant for the planning of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Account grant for planning activities. Each application constitutes an agreement to accept the requirements of this subchapter;
2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Account moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;
3. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5) (CGA Form LP-5);
4. A plan of study representing:
 - i. The proposed planning area;
 - ii. An identification of the entity or entities that will be conducting the planning;
 - iii. The nature and scope of the planning of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and

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iv. A description of the anticipated construction required for abatement and an estimate of anticipated design and construction costs;

5. Comments or approvals of relevant State, local and Federal agencies;

6. Draft engineering agreements and related cost documentation associated with specific planning activities. Project sponsors must receive authorization to award any subagreement from the Department prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved engineering subagreements prior to or concurrently with the award of a Combined Sewer Overflow Account grant for planning activities;

7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the design and building of the project including milestones; and

10. Certification from the local government unit that at least 10 percent of the planning costs for the project will be provided by the local government unit.

(h) In addition to evidence of planning documentation approval (including evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10)), the following shall be submitted when applying for a Combined Sewer Overflow Account grant for the design of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Account grant for design activities. Each application constitutes an offer to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Account moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5) (CGA Form LP-5);

4. A plan of study representing:

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- i. The proposed project area;
 - ii. An identification of the entity or entities that will be conducting the design;
 - iii. The nature and scope of the design of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and
 - iv. A description of the estimated building costs for the project;
5. Comments or approvals of relevant State, local and Federal agencies;
 6. Draft engineering agreements and related cost documentation associated with specific design activities. Project sponsors must receive authorization to award any subagreement from the Department prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved engineering subagreements prior to or concurrently with the award of a Combined Sewer Overflow Account grant for design activities;
 7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);
 8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;
 9. A schedule for initiation and completion of the construction of the project including milestones; and
 10. Certification from the local government unit that at least 10 percent of the design costs for the project will be provided by the local government unit.
- (i) All submittals shall be made in a format compatible with the Department's geographical information system (GIS).

7:22A-6.9 Evaluation of application

- (a) Each application shall be subject to:
1. Preliminary administrative review to determine the completeness of the application;
 2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Act;
 3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

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4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or defer the project application.

7:22A-6.10 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete its full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22A-6.11 Combined Sewer Overflow Account disbursements

(a) For dry weather overflow elimination and solids/floatables reduction planning or design grants, disbursements shall be limited as follows:

1. Disbursements for allowable planning costs shall not exceed 50 percent of the allowable planning costs prior to the submission of complete planning documentation to the Department;
2. Disbursements for allowable planning costs shall not exceed 75 percent of the allowable planning costs prior to the issuance of an environmental assessment in accordance with N.J.A.C. 7:22-10;
3. Disbursements for allowable design costs shall not be made until all planning requirements have been completed to the Department's satisfaction;
4. Disbursements for allowable design costs shall not exceed 50 percent of the allowable design costs prior to the submittal of plans, specifications, contract documents and an engineer's technical design report for the project;
5. Disbursement for allowable design costs shall not exceed 75 percent of the allowable design cost prior to receiving approval of the contract documents for the building of the project from the Department.

7:22A-6.12 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the grant agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this chapter.

(b) The recipient shall not award any subagreement for planning or design of the project until authorization to award has been given by the Department.

7:22A-6.13 Allowable project costs

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(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. Allowable project costs may include:

1. The costs of subagreements for planning or design of the project; and
2. The costs for establishing or using small, minority, and women's business liaison services.

(b) Notwithstanding (a), above, unallowable project costs shall include, but not be limited to:

1. The costs for water quality monitoring to obtain a NJPDES permit or Discharge Allocation Certificate;
2. The costs for subagreements for which authorization from the Department to award was not received in advance of the subagreement;
3. The costs for work that the Department determines is not in compliance with the approved scope of work for the project identified in the grant agreement; and
4. The costs for work not in compliance with this subchapter or the subagreements.

7:22A-6.14 Force account work

(a) A recipient shall not use force account work for activities related to the scope of work for which the grant was awarded where costs will exceed \$25,000 unless the recipient has received the Department's prior written approval therefor.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or
2. Emergency circumstances necessitate its use.

7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow Account design grants shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million or such amount as established in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendatory or supplementary acts thereto, whichever is greater.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.